



# City of San Antonio

## Agenda Memorandum

**File Number:**18-6547

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**Agenda Item Number:** 7.

**Agenda Date:** 12/3/2018

**In Control:** Board of Adjustment

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Case Number: BOA-18-900005  
Applicant: Raul Martinez  
Owner: Raul Martinez  
Council District: 1  
Location: 944 Ruiz Street  
Legal: Lot 3, Block 1, NCB 3561  
Description:  
Zoning: "MF-33 MLOD-2 MLR-2 AHOD" Multi-Family Lackland  
Military Lighting Overlay Military Lighting Region 2 Airport  
Hazard Overlay District  
Case Manager: Nyliah Acosta, Planner

### **Request**

A request for a 4' variance from the 5' side setback requirement, as described in Section 35-310.01, to allow a carport to be 1' from the side property line.

### **Executive Summary**

The subject property is located at 944 Ruiz Street and was originally constructed in 1929. The applicant constructed a carport 1 foot from the side property line without a permit and was cited by Code Enforcement. The carport is constructed of wood, does not have gutters to control runoff, and is within close proximity to the adjacent neighbor. Per the application, the applicant states he had to build the carport close to the neighboring property in order to fit his vehicle.

### **Code Enforcement History**

On 9/27/18, a citation was given for a carport having been built without a permit, and for encroaching into the 5 foot setback.

### **Permit History**

In 2016 a permit was issued for foundation repair.

### **Subject Property Zoning/Land Use**

Existing Zoning	Existing Use
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“MF-33 MLOD-2 MLR-2 AHOD” Multi-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Dwelling
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### **Surrounding Zoning/Land Use**

<b>Orientation</b>	<b>Existing Zoning District(s)</b>	<b>Existing Use</b>
North	“MF-33 MLOD-2 MLR-2 AHOD” Multi-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Dwelling
South	“MF-33 MLOD-2 MLR-2 AHOD” Multi-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Dwelling
East	“MF-33 MLOD-2 MLR-2 AHOD” Multi-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District “C-1 MLOD-2 MLR-2 AHOD” Light Commercial Lackland Military Lighting Overlay	Single-Family Dwelling
West	“MF-33 MLOD-2 MLR-2 AHOD” Multi-Family Lackland Military Lighting Overlay Military Lighting Region 2 Airport Hazard Overlay District	Single-Family Dwelling

### **Comprehensive Plan Consistency/Neighborhood Association**

The property is not within any community, neighborhood, or sector plan and does not have a future land use designation. The subject property is within the West End Hope in Action Neighborhood Association. As such, they were notified and asked to comment.

### **Criteria for Review**

According to Section 35-482(e) of the UDC, in order for a variance to be granted, the applicant must demonstrate all of the following:

1. *The variance is not contrary to the public interest.*

The public interest is defined as the general health, safety, and welfare of the public. In this case, the public interest is represented by setbacks that help to ensure that we have uniform, safe development within the City of San Antonio. A carport located 1 foot from the side property line is contrary to the public interest as it increases fire risk and does not allow for maintenance without trespass. The applicant has installed gutters on the carport, but will likely need to trespass to clean and maintain the gutters to ensure water does not fall onto the neighboring property.

2. *Due to special conditions, a literal enforcement of the ordinance would result in unnecessary hardship.*

Staff was unable to find a special condition in this case that would require the applicant to build a

carport on the side property line.

3. *By granting the variance, the spirit of the ordinance will be observed and substantial justice will be done.*

Granting the variance will not result in substantial justice as there is not a property related hardship that requires the applicant to build a foot from the side property line, thus increasing fire risk for the adjacent property.

4. *The variance will not authorize the operation of a use other than those uses specifically authorized in the district in which the request for a variance is located.*

The variance will not authorize the operation of a use other than those uses specifically authorized in the zoning district.

5. *Such variance will not substantially injure the appropriate use of adjacent conforming property or alter the essential character of the district in which the property is located.*

The requested variance will likely injure the neighboring property. The structure is too close to the property line and violates fire code.

6. *The plight of the owner of the property for which the variance is sought is due to unique circumstances existing on the property, and the unique circumstances were not created by the owner of the property and are not merely financial, and are not due to or the result of general conditions in the district in which the property is located.*

Staff was unable to find a unique circumstance which would require the applicant to locate a carport on the side property line. The location of the carport unnecessarily increases fire risk and does not leave any space for maintenance of the structure without trespass.

#### **Alternative to Applicant's Request**

Denial of the variance request would result in the owner having to meet the required the five foot side setback.

#### **Staff Recommendation**

Staff recommends **Denial with an Alternate Recommendation of a 3' variance to allow the carport to be located 2' from the side property line in BOA-18-900005**, based on the following findings of fact:

1. There is not a property related hardship in this case.
2. Having a carport so close to the side property line will unnecessarily increase fire spread and will not leave room for maintenance without trespass.
3. A 2' side setback leaves enough space for a functional carport, while providing space for maintenance and fire separation.